IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

Crl.Rev.Pet.No. 653 of 1999

CRA.116/1997 of I ADDL. SESSIONS COURT, THRISSUR
CC.29/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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REVN. PETITIONER/APPELLANT/ACCUSED:

KUNJIVELU, S/O BAVA, PONATH,
PERINJANAM WEST, PERINJANAM
VILLAGE, KODUNGALLUR TALUK.

BY ADV. SRI.LLOYD JOSEPH VIVERA

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 653 of 1999

ORDER

The accused, convicted for offences under Sections 452, 354 and 323 IPC and sentenced thereunder in C.C.No.29/96 on the file of the Judicial First Class Magistrate's Court, Kodungallur, is the petitioner. He was sentenced by the trial court to undergo simple imprisonment for six months and to pay a fine of Rupees five hundred and in default to undergo simple imprisonment for fifteen days for offence under Section 452 IPC and to undergo simple imprisonment for three months under Section 354 IPC. No separate sentence was awarded for offence under Section 323 IPC.

2. The petitioner challenged the said conviction and sentence before the Sessions Court, Thrissur in Crl.A.No.116/97. The Sessions Judge

confirmed the conviction of the petitioner for offences under Sections 452, 354 and 323 IPC, but modified and reduced the sentence to simple imprisonment for one month each under Sections 452 and 354 IPC, though, however, he confirmed the fine awarded under section 452 IPC by the trial court. Hence, this revision.

3. The charge against the accused is that at about 8.15 p.m. on 3.1.1996 he trespassed into the house of PW1 Prameela, caught hold of her hand and requested for sexual favours, after removing the dhoti worn by him and when PW1 raised alarm, he beat her on her face and breast and thus voluntarily assaulted and caused hurt to her and outraged her modesty.

4. PWs 1 to 4 and PW7 were the occurrence witnesses examined by the prosecution to bring home the guilt in the accused, of whom, PW3 turned hostile, whereas the other witnesses supported the prosecution case. PW5 is attester to the scene

mahazar; PW6 is the doctor, who examined PW1 and issued Exhibit P3 wound certificate in relation to PW1; PW8 is the Head Constable, who recorded the F.I. statement of PW1 and registered the crime, drawing up Exhibit P4 FIR in that behalf and PW9 is the Investigating Officer, who conducted and completed the investigation in the case and laid final report against the petitioner.

5. PW1 has given evidence that the accused is the son of her husband's aunt; that at about 8.15 p.m. on 3.1.1996, when herself and her two children were alone in the house, as her husband had gone in the fishing boat and she was weaving screw pine mat sitting in the western veranda of her house, the accused came there from the north and caught hold of her hand and drew her towards him saying that his wife is not well and he wants to have sex with her, removing the dhoti worn by him in that process. PW1 raised alarm and thereupon her children, who were asleep inside the house and the

neighbours came over. The accused beat her on her face and breast and also pressed on her breast and when people assembled, he took to heels. PW1 stated that she felt pain on those parts of the body where the accused beat her; that she was taken to Kuttilakadavu Hospital and at the hospital she gave Exhibit P1 F.I. statement to the police. She also stated that there was light kept lit in the veranda and that her modesty is outraged by the conduct of the accused. Nothing could be brought out to disbelieve her testimony in cross-examination.

6. To the suggestion put to her is as to whether her husband was not indebted to several persons to the extent of Rupees fifty thousand, including Rupees five thousand to the accused and as to whether this case was not being foisted against the accused, as he went over to her house to ask for return of the amount due to him, PW1 has stated that no amount is due from her husband to the accused, but that, an amount of Rs.2,500/- is

due from her to the wife of the accused. In cross-examination, she has stated that though the accused beat her on her face and breast, she did not disclose the injuries on her breast, as she was reluctant to expose her breast before the doctor.

7. PW2 is the daughter of PW1. According to her, when she woke up and came to the veranda hearing the cry of her mother, she saw the accused inflicting blows on the face and breast of her mother and thereafter, the accused taking to heels wearing his dhoti. Nothing could be brought out from her testimony also so as to render her testimony unreliable. PW3 is a neighbour of PW1 and he is the nephew of the accused. He has turned hostile to the prosecution and has not supported the prosecution case. PW4 also is a neighbour of PW1 and the accused. He gave evidence that when he was returning after fishing at about 8 p.m. on the date of occurrence, he heard an alarm from the house of PW1; that then he went over there and then

he was told of the occurrence by PW1. Despite cross-examination, nothing could be brought out to discredit his testimony as well.

8. PW7 is a fisherman by profession and is residing on the western side of the house of PW1. According to him, he was going out from his house to the house of PW1 on hearing the alarm of PW1 and then he saw the accused going out of the house of PW1. According to him, the husband of PW1 is his younger brother and the mother of the accused is his aunt. He has also stated that there was moon light during that night. The evidence of PWs 2, 4 and 7 have convincingly corroborated the testimony of PW1 as regards the assault made by the petitioner against PW1 and outraging her modesty, trespassing into her house.

9. It is contended by the learned counsel for the petitioner that purposely, the petitioner was being implicated to avoid his demanding money due to him from the husband of PW1. Apart from the mere

suggestion in the cross-examination, there is absolutely nothing in evidence, which probabilises the suggestion so made and hence, the argument advanced is not tenable. The argument that modesty of PW1 had not been outraged also cannot be heard from the petitioner for the reason that he caught hold of the hand of PW1 demanding sexual favours saying that his wife is ill and also in that process undressed himself and he inflicted blows on PW1, as she raised alarm and did not concede to his demands. In fact, PW2, the daughter of PW1 has seen the accused inflicting blows on PW1 and also wearing the dhoti and taking to heels from their house. PW7 saw the petitioner/accused taking to heels from the house of PW1, when, on hearing the alarm, PWs 4 and 7 were coming to the house of PW1. Counsel for the petitioner further asserts that presence of the petitioner in the house of PW1 is admitted, but that, the petitioner was going over there to ask for return of cash and that even

according to PW1 she owed an amount of Rs.2,500/- to the wife of the petitioner. If that be so, there was no reason for him to take to heels, when others were coming to the house of PW1, on hearing her alarm.

10. As rightly observed by the courts below the time, at which, demand for return of money is to be made, is not at a time when the husband of PW1 was not there and especially when the time was night, whether it be 8.15 p.m. and 8.45 p.m. and children of PW1 also were asleep. Further, the convincing evidence tendered by PWs 1 and 2 does not enable a view being taken that the petitioner was going over to the house of PW1 to ask for return of money borrowed as alleged and it repels all possibilities of the petitioner having gone over to the house of PW1 for any purpose other than to ask for sexual favours. The conviction of the petitioner concurrently by the courts below for offences under Sections 452, 354 and 323 IPC is,

hence, legal and proper and is sustainable.

11. Finally, it is argued by the counsel for the petitioner that now the petitioner is aged about 68 years and the sentence awarded to him is excessive. I am not prepared to accept the argument so advanced. In fact, the sentence awarded by the trial court, as modified by the appellate court, as it stands now, is only simple imprisonment for one month each for offences under Sections 354 and 452 IPC with no separate punishment for offence under Section 323 IPC. Over and above the substantive term of imprisonment as aforesaid, fine of Rupees five hundred is also imposed for offence under Section 452 IPC with a default sentence of simple imprisonment for fifteen days. The sentence so awarded in my view is flee bite sentence. However, I do not propose to take up the matter in suo motu revision to enhance the punishment. The sentence, as it stands now, is very very moderate and mild and does not deserve to be interfered with, so as

to grant any further reduction.

This revision, in the circumstances, is devoid of merit and is dismissed. The learned Magistrate shall take steps forthwith to have the sentence, as modified in appeal, enforced against the petitioner.

24th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.R.P.No.653 of 1999

ORDER

24th January, 2007